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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,877	01/03/2000	LAWRENCE M. AUSUBEL	3788-7004	8423
7590	06/02/2004		EXAMINER	
STANLEY B. GREEN, ESQ. CONNOLLY BOVE LODGE & HUTZ P.O. BOX 19088 WASHINGTON, DC 20036			POINVIL, FRANTZY	
		ART UNIT	PAPER NUMBER	
		3628		

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

✓ P

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/476,877	AUSUBEL, LAWRENCE M. <i>MLW</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Frantzy Poinvil	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 March 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 87-166 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 87-90, 92-100, 102-110, 112-120, 122-130, 132-140, 142-150, 152-160 and 162-166 is/are rejected.  
 7) Claim(s) 91,101,111,121,131,141,151 and 161 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/15/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 87-90, 91-100, 102-110, 112-120, 122-130, 132-140, 142-150, 152-160, and 162-166 are rejected under 35 U.S.C. 103(a) as being unpatentable over Business Editors (hereinafter, ONSALE) in view of Fujisaki (US Patent No. 4,789,928).

As per claims 87-88, 97, 108, 117, 127-128, 137 and 147-148, 53, ONSALE discusses a computer implemented auction system comprising an auctioneer system coupling to at least two remote user systems. The user system is a general purpose computer comprising means for receiving messages from the auctioneer's system and for displaying messages; means for receiving bid related information from users; means for transmitting bid information to the auctioneer's system. See the entire document.

The auctioneer's system including means for generating and transmitting messages to user system, means for receiving bid information from user systems. See the entire document.

The claimed "means for transmitting bid information to the auctioneer's system, said bid information including bids (Si , Pj) each comprising a set identification Si and a value parameter

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P<sub>i</sub>, where the set identification S<sub>i</sub> identifies a set of items that the user proposes to transact and where the value parameter P<sub>j</sub> specifies a value proposed by the user for the set of items identified by S<sub>i</sub>" is being interpreted as a user transmitting a bid identifying the items and the prices a bidder is placing to the central system. This teaching is abundantly supplied in the ONSALE system. Applicant is directed to the reference. As per the claimed a decision means including a selecting means which selects bids to maximize a function of the value parameters P<sub>i</sub> of the selected bids, in the ONSALE system, the system constantly monitors the highest bid and the name of the highest bidder. Note pages 2 and 3.

Fujisaki discloses an auction information transmission processing system. The system comprises a host terminal and a plurality of dealer terminals for submitting to the host terminal. Note the abstract and figure 1 of Fujisaki. Fujisaki further discloses a decision means responsive to the bid information received from the user systems for determining whether an auction should continue or terminate, the decision means including means to initiate the generation of a non-final message to at least one user system in response to a determination to continue an auction. Note column 7, lines 24-27, 53-51; column 10, lines 32-59; column 13, lines 21-27 of Fujisaki. Fujisaki also discloses means to initiate the generation of a final message to at least one user system in response to a determination to terminate an auction. Applicant is directed to column 5, lines 55-58; column 10, line 62 to column 11, line 9 and column 13, lines 27-31 of Fujisaki. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate these features as taught by Fujisaki into the system of ONSALE in order to provide instant messages such as bid status and auction status to all bidders thereby providing a user friendly system.

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Maximizing a function of the value parameters of selected bids would have been obvious to one of ordinary skill in the art to do in the combination of the ONSALE system and Fujisaki so as to relate to the highest bidding price to the related item being auctioned. As per applicant's argument that Fujisaki does not teach multiple instances of each of plural dissimilar items, applicant is directed to the ONSALE system denoting these the teachings of multiple instances of each of plural dissimilar items. It should be noted that if there are a plurality of different items where different bids are continuously placed thereon as in the combination of ONSALE and Fujisaki, the selection of the highest bids would be disjoint.

As per claims 89, 98, 109, 118, 129, 138 and 149, the combination of the ONSALE system and Fujisaki does not explicitly state, the items comprise television licenses or associated derivative rights. The Examiner asserts that these kinds of data do not affect the functionality of the system of ONSALE as these are merely different types of data that cannot be accorded patentable differences. These are different intended types of "items", "things" or "objects" that would have been obvious to the skilled artisan when gleaning from the ONSALE system as mostly any items can be auctioned in the ONSALE system. Applicant is directed also to column 14, lines 43-46 of Fujisaki where it is indicated that the system "can be applied to the auctioning of various articles".

As per claims 90, 99, 110, 119, 130, 139 and 150, auctions are well known in the art to be conducted in multiple rounds. Doing the same in the ONSALE system and Fujisaki would have been obvious to one of ordinary skill in the art in order to simulate a live auction system.

As per claims 92-93, 102-103, 112-113, 122-123, 132-133, 142-143, 152-153 and 162-163, limiting the number of bids that may be entered by a particular user based on previous bidding activity by the particular user would have been obvious to do in the combination of the ONSALE system and Fujisaki especially if a user is the highest bidder. Thus, the highest bidder would not need to place any other higher bids during a particular round.

As per claims 94-96, 104-106, 114-116, 124-126, 134-136, 144-146, 154-156 and 164-166, limiting bids to identifying particular sets of the plurality of items would have been left to the auctioneer of the ONSALE and Fusjisaki system and such would have also been based on the starting bidding price of the particular sets of the plurality of items. Setting a minimum or a maximum value for the item would have also been left to the auctioneer of the ONSALE and Fujisaki so as to assure that the item is auctioned at a particular price.

As per claims 100, 120, 140 and 160, once the auction is terminated, an indication of a winner will be made, and it would have been obvious to one of ordinary skill in the art at the time of the invention to note that the sets  $S_i$  identified by the selected bids in the final round of the auction indicate the items that will be assigned to the respective users after the auction.

**2. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Allowable Subject Matter***

3. Claims 91, 101, 111, 121, 131, 141, 151 and 161 are objected as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art taken alone or in combination failed to teach or suggest a decision means or function which compares the sum of the parameters Pi from the selected bids to a function of the sum of the parameters Pi from the selected bids of an earlier round.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil whose telephone number is (703) 305-9779. The examiner can normally be reached on Monday-Thursday 7:00AM-5:30PM.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

FP  
May 24, 2004

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
*All 3628*